

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FRACTUS, S.A.

v.

AT&T MOBILITY LLC, ET AL.

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Case No. 2:18-cv-135- JRG

**PRETRIAL CONFERENCE
HELD BEFORE DISTRICT JUDGE RODNEY GILSTRAP
September 3, 2019**

OPEN: 9:32 a.m.**ADJOURN: 5:08 p.m.**

ATTORNEYS FOR PLAINTIFF:	See attached.
ATTORNEYS FOR DEFENDANTS- INTERVENORS:	See attached.
LAW CLERKS:	Matthew Wood Taylor Fitzner
COURT REPORTER:	Shelly Holmes, CSR-TCRR
COURTROOM DEPUTY:	Jan Lockhart
TIME	MINUTES
9:32 a.m.	Court opened. Counsel announced ready for hearing.
	The Court GRANTED leave to file Plaintiff's Amended Complaint. (Dkt. No. 298.)
	The Court addressed T-Mobile's position regarding its counterclaims (Dkt. No. 581.) Mr. Kubehl spoke on behalf of T-Mobile. Mr. Ng spoke on behalf of Plaintiff

TIME	MINUTES
9:40 a.m.	<p>Counsel announced ready for hearing. The Court gave the parties instructions for Jury Selection and Trial. Jury Selection will be held on October 3, 2019, at 9:00 a.m. FJC Patent Video to be shown. Evidence will begin immediately following Jury Selection. The Court and staff are in chambers each morning at 7:30 a.m. The trial will start each day at 8:30 a.m. Exhibits used the prior day will be read into the record prior to the jurors returning to the courtroom (usually around 8:15 a.m.) The Court allotted 12.5 hours per side to try the case (this time does not include the time for voir dire, opening statements and closing arguments); 30 minutes a side for voir dire (of this time, a 3-minute, high level, overview of the case may be given); 30 minutes for opening statements and 40 minutes a side for closing arguments; 8-member jury to be selected (four strikes per side); procedures for disputes discussed. The parties are to email law clerks by 10:00 p.m. each night of disputes re demonstratives to be used the next day, or that there are no disputes. Email addresses for the clerks Matthew_Wood@txed.uscourts.gov and Taylor_Fitzner@txed.uscourts.gov. Binders with disputed information are to be prepared and submitted to the Court at 7:00 a.m. the following day. Deposition disputes are to be given to the Court at least two days before they are going to be used. Rule 50(a) motions will be heard after the conclusion of all evidence is concluded. The informal charge conference will be held in chambers after Rule 50(a) motions are heard. A formal charge conference will follow afterward. The Court discussed policies and the Standing Order regarding the sealing of the courtroom. Juror questionnaires and the manner of use thereof were discussed, i.e., copies of the Juror Questionnaire may be obtained from Kecia Clendening, Deputy-in-Charge, Marshall Texas. Juror notebooks are to be prepared by counsel and delivered to the Court, in Marshall, Texas, by 12:00 p.m. on October 1, 2019. Each notebook should include the tabbed witness pages (each witness page should contain a head and shoulders photograph of the witness followed by ruled lines on the remainder of the page), claim construction chart, a 3-hole punched legal pad and a non-clicking pen. The Court also gave guidance regarding expert witness testimony. Counsel for the parties and witnesses are to use first and last names only. Second Pretrial Conference set on September 19, 2019, at 9:00 a.m. Prior to the second pretrial conference the parties are to notify the Court by 1:00 p.m. on September 18, 2019 of any remaining disputes. Lunch will be delivered by the Court to the Jury.</p>
	<p>The Court addressed Dkt. Nos. 336, 346, 355, and 568. Due to settlement, these Motions are DENIED as Moot.</p>
10:15 a.m.	<p>The Court heard argument on Fractus's Motion for Leave to Modify the Protective Order (Dkt. No. 614.) Ms. Henry argued on behalf of Plaintiff. Mr. Govett argued on behalf of AT&T. Mr. Vandenburg argued on behalf of CommScope. The Court ORDERED that the AT&T documents be produced to Verizon and T-Mobile. Mr. Govett was excused. The Court DENIED the motion.</p>

TIME	MINUTES
	The Court heard argument on Verizon's Daubert Motion to Exclude Dr. Stuart Long from Offering Alleged Expert Testimony Regarding Non-Exemplary Products (Dkt. No. 341.) Mr. Barton argued on behalf of Verizon. Mr. Stamatopoulos argued on behalf of Plaintiff. The Court DENIED the motion.
10:59 a.m.	The Court heard argument on Defendants' Motion to Exclude Certain Opinions of Dr. Stuart Long (Dkt. No. 342.) Mr. Kubehl argued on behalf of T-Mobile. Mr. Ng argued on behalf of Plaintiff. The Court GRANTED-IN-PART and DENIED-IN-PART the motion for the reasons set forth on the record. The Court ORDERED the parties to file a motion for any additional claim construction within 24 hours. Response due after.
11:45 a.m.	Lunch recess.
12:55 p.m.	Court reconvened. The Court heard argument collectively on Intervenor-Defendant's Motion to Exclude the Opinions of Robert Mills under Rule 702 (Dkt. No. 345) and Fractus's Motion for Leave to Serve Supplemental Expert Report of Robert Mills (Dkt. No. 598.) Mr. Vandenburg argued on behalf of Defendant. Mr. Sauter argued on behalf of Plaintiff. The Court DENIED Dkt. No. 345 and GRANTED Dkt. No. 598.
	The Court heard argument on Verizon's Motion to Exclude the Opinions of Robert Mills (Dkt. No. 340.) Mr. Grant argued on behalf of Verizon. Mr. Sauter argued on behalf of Plaintiff. The Court DNIED the motion.
	The Court heard argument on T-Mobile's Motion to Exclude the opinions of Robert Mills (Dkt. No. 352.) Mr. Fareed argued on behalf of T-Mobile. Mr. Sauter argued on behalf of Plaintiff. The Court DENIED the motion. Recess.
2:49 p.m.	Court reconvened. The Court heard argument on Fractus's Motion to Strike Declaration of Daniel Van Der Weide and Portions of David Pozar's Expert Report (Dkt. No. 348.) Mr. Stamatopolous argued on behalf of Plaintiff. Mr. Tobin and Mr. Bremer argued for T-Mobile and CommScope. The Court DENIED the motion.
3:05 p.m.	Fractus's Motion to Strike the Rule 26(a)(2)(C) Expert Disclosures of Dr. Martin Zimmerman (Dkt. No. 354.) Ms. Ruiz argued for Plaintiff. Mr. Vandenburg argued for CommScope. The Court GRANTED the motion as to invalidity, noninfringemment, scope and content as to the prior art, the Court DENIED the motion as to noninfringing alternatives. With regard to frequency of use the Court DENIED the motion. The Court DENIED the motion as to customer value.
3:42 p.m.	The Court heard argument on SEALED PATENT MOTION for Leave to Serve a Supplemental Infringement Report of Dr. Stuart Long by Fractus, S.A. (Dkt No. 469) and the SEALED MOTION for Partial Summary Judgment of Non-Infringement and of No Willful Infringement filed by CommScope Technologies LLC (Dkt. No. 351.) Mr. Bremer argued for Defendant. Mr. Stamatopolous and Mr. Perlstein argued on behalf of Plaintiff. The Court DENIED CommScope's motion. The Court GRANTED the motion as to leave to supplemental report and ORDERED that Dr. Long be re-deposed for a period of 2.5 hours with respect to his supplemental report.

TIME	MINUTES
4:43 p.m.	The Court heard argument on the Defendants' and Defendant-Intervenors' Motion for Partial Summary Judgment regarding Prior Art Status filed by Cellco Partnership d/b/a Verizon Wireless (Dkt. No. 338.) Mr. Cox argued on behalf of Defendants. Mr. Chan argued on behalf of Plaintiff. The Court GRANTED the motion in all respects.
5:05 p.m.	The Court will take up remaining dispositive motions and motion in limine disputes on September 19, 2019 at 9:00 a.m. File a notice on September 18, 2019 by 1:00 p.m. remaining disputes.
5:08 p.m.	Court adjourned.